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In re Application of: LOHR, et al.
Application No. 10/583,090
Filed: 15 June 2006
For: HARQ PROTOCOL WITH
SYNCHRONOUS RETRANSMISSIONS

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. § 708.02 (VIII)

This is a decision on the petition filed 26 July 2006, to make the above-identified application special, under 37 CFR § 102(d) and MPEP § 708.02(VIII): Accelerated Examination.

The Petition is **DISMISSED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

- (a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
- (b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
- (c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;
- (d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

In this case, the petition fails to properly discuss the claimed subject matter in accordance with the section (e) requirements supra.

The petition filed 26 July 2006 fails to discuss the **claimed limitations** with respect to the references in accordance with the requirements of 37 CFR 1.111 (b) and (c). In particular, the instant petition specifically and only references independent claim 28 (although there are three independent claims in the instant application, i.e. claims 28, 41 and 51). Petitioner should ensure that the above discussion is directed to how the language of **each of** the pending independent claims (i.e. 28, 41 and 51) is specifically distinguishable and patentable from the references provided in requirement (d) above.

Further, the petition filed January 26 July 2006 repeats **substantially the entirety** of the independent claim language (claim 28) and identifies all limitations as those limitations that the reference(s) do not show or suggest, thus the petition fails to discuss the **claimed limitations** with respect to the references in accordance with the requirements of 37 CFR 1.111 (b) and (c). The petition does not specifically recite language or limitations from the independent claims to properly compare/contrast the claimed invention (each of the independent claims) with respect to the prior art in the identified references. Petitioner is required to submit a **detailed discussion that includes identifying claim limitations with particularity for each independent claim** that shows how the claimed invention distinguishes over the relevant teachings of each reference.

Petitioner should ensure that the discussion of the particular claim limitations accurately reflects the language found in each of the independent claims (emphasis added). Note, the recitations "a NACK feedback message", "the mobile station transmits ..." and "even though ..." found in the instant petition discussion on page 10, do not appear to be found in claim 28 as argued. From the foregoing, it is clear that the petition's discussion is not commensurate with the instant language found in pending claim 28.

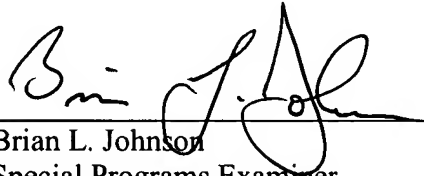
In the discussion of the references, Petitioner is required to point out (substantively detail) the prior art elements and associations germane to the claims to fully flesh-out the comparison between the referenced prior art and Applicant's claimed features. The petition must specifically show, for each independent claim, specific language that distinguishes over each given reference in order to specify "how the claimed subject matter is patentable over the references."

Finally, Petitioner should ensure that each and every reference deemed to be the most closely related references (identified and set forth in item (d) above), is addressed in the discussion and/or specifically identify those references that are not deemed to be closely related. The instant petition appears to set forth 15 references deemed to be most closely related, but only discusses patentability with respect to seven of those references.

Petition to Make Special **DISMISSED**.

Petitioner is given one opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the mail date of this decision.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

A handwritten signature in black ink, appearing to read "Brian L. Johnson", is written over a horizontal line.

Brian L. Johnson
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